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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,775	01/03/2002	Bruce Elliot Kramer	TREADMILL1	8566

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EXAMINER

CROW, STEPHEN R

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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08/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/033,775	Applicant(s) KRAMER ET AL.	
	Examiner Steve R. Crow	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,10-13,18-19,22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on 04/13/09, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/LoAn H. Thanh/

Supervisory Patent Examiner, Art Unit 3764

Response to Amendment

1. Upon further review , the finality of the previous office action is withdrawn because the new matter limitations in the claims had not been considered. This is a

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matter of procedure and is not an admission by the Examiner that the application does not contain new matter.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 6-7,10-12,18-19,22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

2. The pair of endless belts; the separate belt inclinations; the independently driven belts; the separate pivoting handlebar, and other structure claimed are not described and shown, as originally filed, by the Disclosure.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Moon et al.

The Moon treadmill is capable of receiving two adults in various relative orientations. The claim limitation "side-by-side" can include: one user ahead of the other user; the two users facing orthogonal to the belt's direction of travel; two users facing forward and fitted between the handrails when the belt is stationary.

- Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelsey et al.

The Kelsey et al treadmill is capable of receiving two adults in various relative orientations. The claim limitation "side-by-side" can include: one user ahead of the other user; the two users facing orthogonal to the belt's direction of travel; two users facing forward and fitted between the handrails when the belt is stationary.

2. Claims 7,10,11,19,22,23 are rejected under 35 U.S.C. 102(b) as being anticipated by Piaget et al.

Piaget et al discloses a treadmill a base, two pairs of parallel, spaced rollers rotatably disposed in the base, and two endless belts, wherein one belt extends around both rollers in one pair of rollers and the other belt extends around both

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rollers in the other pair of rollers, wherein each belt has a width which is large enough to accommodate one treadmill user, and wherein the two belts are positioned to accommodate two treadmill users side-by-side, wherein each belt has a width which is large enough to accommodate an adult person; and wherein the belts are inclinable.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,5 and 13,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen.

Moon et al discloses all of applicant's claimed invention except for the specific widths claimed.

Derksen teaches the well recognized use of treadmills for training horses as shown in figure 3. In view of this well recognized treadmill use, it would have been obvious to one skilled in the art to enlarge the Moon et al treadmill to any desirable width such as 45 inches wide for accommodating any desired animal for exercise purposes.

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The examiner notes that this is a matter of design choice and is a matter of size or degree, as modifications that would have been obvious to an artisan of ordinary skill in light of the teachings of the prior art.

An enlarged treadmill width of 45 inches would be desired to accommodate extremely large persons or animals and is considered a design choice which carries no patentable weight. As to the method claims 13-18, such a sized treadmill could be used for any desired function , such as accommodating plural animals.

4. Claims 1,5 and 13,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al.

5. Kelsey discloses a treadmill as depicted in Figure 2 having an adult male supported thereupon.

The examiner contends that the Kelsey et al treadmill width, when viewed with respect to the relative dimensions of the user and the treadmill , as shown in figure 2, appears approximately about 40-45 inches wide. An athletic adult male has a shoulder width range of from about 25 to 30 inches. The Kelsey figure 2 depiction clearly shows a treadmill width of the order of 2 ½ to three times the width of a user. Figure 2 is prior art. Figure 2 is considered an accurate representation of the proportionality of the treadmill with respect to a user. It is proper to approximate the width of the treadmill given the proportional dimensions provided in figure 2.

If not possessing precise dimensions, the examiner notes that providing a belt width of at least 45 inches is a matter of design choice and is a matter of size or

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degree, as modifications that would have been obvious to an artisan of ordinary skill.

Furthermore, in view of KSR, it would have been obvious to one skilled in the art to try or experiment with various belt widths to accommodate different sized users; e.g., tailor the belt width according to the dimensions of the desired user, such as morbidly obese people who require larger accommodations.

3. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Nichols.

Nichols discloses the use of a handle 100 pivotally connected to the handle 15 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al or Kelsey et al treadmills either by clamping the handle 100 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

4. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al or Kelsey et al treadmills either by clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

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5. Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Piaget et al in view of Gerard.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Piaget et al treadmill either by clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

6. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al in view of Derksen as applied to claims 5 and 17 above, and further in view of Gerard or Nichols.

Nichols discloses the use of a handle 100 pivotally connected to the handle 15 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al treadmills either by clamping the handle 100 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

7. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon et al or Kelsey et al in view of Gerard.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Moon et al treadmills either by

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clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

6. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey et al as applied to claims 5 and 17 above, and further in view of Gerard or Nichols.

Nichols discloses the use of a handle 100 pivotally connected to the handle 15 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Kelsey et al treadmills either by clamping the handle 100 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

Gerard discloses the use of a handle 42 pivotally connected to the handle 36 of a treadmill. In view of this teaching, it would have been obvious to one skilled in the art to provide a pivoting handle on the Kelsey et al treadmills either by clamping the handle 42 to the sides of the treadmill handle or by attaching to the front span of the treadmill handle for user support purposes.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 571-272-4973. The examiner can normally be reached on Max Flex.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sc/Steve R Crow/
Primary Examiner, Art Unit 3764